National Labor Relations Board



Weekly Summary of NLRB Cases

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CASES SUMMARIZED VISIT <u>WWW.NLRB.GOV</u> FULL TEXT

RCC Fabricators, Inc.	Southampton, NJ	1
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OTHER CONTENTS

List of Decisions of Administrative Law Judges	2
List of Unpublished Board Decisions and Orders in Representation Cases	2
 Contested Reports of Regional Directors and Hearing Officers 	
 Uncontested Reports of Regional Directors and Hearing Officers 	
 Requests for Review of Regional Directors' Decisions and 	
Directions of Elections and Decisions and Orders	
Miscellaneous Board Decisions and Orders	

Press Releases (<u>R-2662</u>): Mori Rubin Selected as Deputy Regional Attorney of NLRB's Region 31 Office in Los Angeles, CA

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RCC Fabricators, Inc. (4-CA-31757, 4-RC-20569, 20572; 352 NLRB No. 88) Southampton, NJ June 9, 2008. The Board affirmed the administrative law judge's finding that foremen Ronald Earley and James Phillips were statutory supervisors based on the finding that they exercised independent judgment when assigning, and effectively recommending the assignment of, employees to departments and significant overall tasks. In light of that finding, the Board did not pass on the judge's further finding that they possessed the power to discipline and effectively recommend discipline, and his alternative finding that foreman Phillips was the Respondent's agent. In addition, the Board affirmed the judge's finding that Phillips unlawfully interrogated employees about a union meeting; however, it reversed the judge and dismissed the allegation that Phillips' questions about the union meeting created the impression of surveillance. Finally, because of their supervisory status, the challenges to Earley's and Phillips' ballots were sustained. Accordingly, the Board issued a certification of representative. [HTML] [PDF]

The Respondent manufactures railroad equipment and structural steel components in a plant in Southampton, New Jersey. At all times relevant to the proceedings, Carl Baer was the shop manager. Under his supervision, James Phillips was foreman in charge of railroad construction operations, and Ronald Earley was foreman in charge of structural steel operations. This consolidated C and R case involves a Nov. 21, 2002 election covering employees at the Respondent's Southampton facility. The election resulted in 6 votes for and 5 against the Petitioner (Carpenters), with 5 challenged ballots. In his initial decision, the judge found two Section 8(a)(1) violations involving interrogation and appearance of surveillance, and he dismissed allegations of threatened plant closure and discriminatory discharge. The judge sustained the Respondent's challenge to the discharged employee's ballot, because of his discharge, and to the ballots of two laid-off employees, because they lacked a reasonable expectation of recall. The Board, without ruling on these conclusions, remanded the case to the judge for further consideration in light of *Oakwood Healthcare, Inc.*, 348 NLRB No 37 (2006), *Croft Metals, Inc.*, 348 NLRB No. 38 (2006), and *Golden Crest Healthcare Center*, 348 NLRB No. 39 (2006). The judge issued a supplemental decision on Jan. 30, 2007.

The primary issue in this case was the supervisory status of foremen Phillips and Earley. Both foremen attended weekly production meetings, and they met daily with shop manager Baer to discuss production goals and assignments. The Board found sufficient evidence that the foremen exercised independent judgment in assigning and effectively recommending assignments in their respective production areas.

On October 10, 2002, the day after employees met with union representatives at a local pizza parlor, foreman Phillips individually questioned two employees about the meeting, who attended, and what was said. The Board found that Phillips' conduct constituted unlawful interrogation, but it did not create the impression of surveillance.

(Chairman Schaumber and Member Liebman participated.)

Charges filed by Metropolitan Regional Council of Carpenters, Eastern Pennsylvania, State of Delaware, and Eastern Shore of Maryland; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Philadelphia, April 8 and 10, and May 15, 2003. Adm. Law Judge Paul Buxbaum issued his decision Oct. 23, 2003, and his supplemental decision Jan. 30, 2007

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

HTI Hydraulic Technologies, LLC, a wholly owned subsidiary of Ligon Industries, LLC (Machinists District Lodge 54) Galion, OH June 11, 2008. 8-CA-37473; JD-32-08, Judge David I. Goldman.

Rochester Gas & Electric Corp. (Electrical Workers [IBEW] Local 36) Rochester, NY June 12, 2008. 3-CA-25915; JD-31-08, Judge Wallace H. Nations.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Covanta Warren Energy Resources, L.P., Oxford, NJ, 22-RD-1487, June 10, 2008 (Chairman Schaumber and Member Liebman)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

American Buildings Co., a subsidiary of Nucor, Inc., Carson City, NV, 32-RD-1551, 32-RM-811, June 10, 2008 (Chairman Schaumber and Member Liebman)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Action Carting Environmental Services, Inc., Bronx, NY, 2-RC-23261, June 12, 2008

DECISION AND DIRECTION [that Regional Director open and count ballots]

Huntleigh USA Corp., Columbus, OH, 9-RM-1054, June 12, 2008

DECISION AND ORDER [remanding proceeding to Regional Director for further appropriate action]

T.F. Louderback, Inc. d/b/a Bay Area Beverage Co., Richmond, CA, 32-RC-5551, June 12, 2008

Scripps Health d/b/a Scripps Memorial Hospital Encinitas, Encinitas, CA, 21-RD-2841, June 12, 2008

Serco Management Services, Inc., Los Angeles, CA, 31-RC-8644, June 12, 2008

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Air Liquide America L.P., Wailuku, Maui, HI, 37-RC-4182, June 10, 2008 (Chairman Schaumber and Member Liebman)

Robinson Solutions (US), Inc., Lansing, MI, 7-RC-23185, June 10, 2008 (Chairman Schaumber and Member Liebman)

Mandalay Corp., d/b/a Mandalay Bay Resort & Casino, Las Vegas, NV, 28-RC-6596, June 12, 2008 (Chairman Schaumber and Member Liebman)

Miscellaneous Decisions and Orders

CERTIFICATION OF REPRESENTATIVE AS BONA FIDE UNDER SECTION 7(B) OF THE FAIR LABOR STANDARDS ACT OF 1938

City of Burbank, Burbank, CA, 31-WH-6, June13, 2008
